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Texas Session Laws: Same Chapter, Different Verse

By James Hambleton and Jim Paulsen

An inconsistency in the publication of Texas session laws, beginning with the tag-end of the 68th Legislature, promises to create considerable confusion in finding and citing session laws. The problem stems from the fact that one publisher produced the paper pamphlet "advance sheets" for new laws, while another released the bound volumes of the same session laws. As one might expect, page numbers do not coincide.

West Publishing Company publishes the paperback *Vernon's Texas Session Law Service*, providing reasonably rapid access to legislation as it is passed by the Legislature. From 1941 to 1985, West also held the contract from the Texas secretary of state to produce the "official" hardbound *Texas General Laws*. Page numbers remained the same, since the same printing plates were used to produce both the unofficial and the official versions. The only real difference was the addition of a suitable-for-framing certificate from the secretary of state, found at the beginning of the bound volumes.

In an effort to break into this area of the Texas legal publications market, however, in 1985 Bancroft-Whitney won the contract to publish the bound laws from the Texas secretary of state. (This contract is awarded every two years.) Since the format used by Bancroft-Whitney is more compact than that employed by West, page numbers no longer correspond. While any increase in competition in the high-priced law book market is laudable, this change in format has created some potential for confusion in research and citation.

As laws are passed, each piece of legislation is assigned a unique chapter number by the Texas secretary of state. When the laws are gathered and published by a session law service, each chapter can also be referenced by the page number on which it starts.

More often than not, an attorney will attempt to find a session law by its page number, rather than by its chapter number. Not only are attorneys more accustomed to working with page numbers than with "chapters" and "sections," they have also been encouraged by legal publishers to prefer page references. For example, in Vernon's annotated statutes and codes (the "black" statutes), references to session laws have been first by page number, then by chapter number. If an attorney wishes to find a session law citation by finding a parallel citation to the appropriate statute or code section in the *Shepard's Texas Citations* statutory tables, only the page references are given.

What this means is that if an attorney attempts to find a 1985 session law, armed only with a page number from *Shepard's Texas Citations* or the West 1986 pocket parts, that attorney will have a long and fruitless search, as the page numbers will not correspond to those in the bound volume. Since *Shepard's Texas Citations* do not even contain a chapter reference for session laws in the general statute tables, that source is useless.

Fortunately, this story has a relatively happy ending. West Publishing Company has been made aware of the problem and has already corrected it. The 1987 pocket parts for the anno-

tated statutes and codes contain an explanation to the effect that, beginning with the 1984 Second Called Session, references to session laws will be provided only by chapter number, rather than by page number. Although Shepard's had not, at this printing, changed the format for session law citation, Shepard's/McGraw-Hill has indicated that in a forthcoming pamphlet all references to session laws, beginning with 1985, will be changed from page number to chapter number.

Equally as fortunate is the fact that no changes in citation form will be necessary. Even before it made any difference whether one cited a page number in the session law service or in the bound volume, the "Green Book" (the Texas Law Review's *Texas Rules of Form*) required different citation forms for *Vernon's Texas Session Law Service* and the *Texas General Laws*, together with parallel citations to chapter and section. These distinctions, formerly subject to criticism as redundant and practically meaningless, now have some utility.

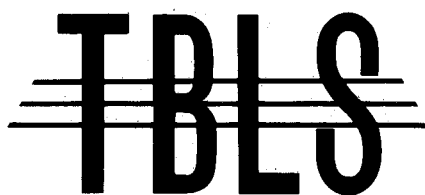
For example, according to the Green Book, an "advance sheet" citation to a 1985 session law should look like: "Act of May 25, 1985, ch. 648, 1985 Tex. Sess. Law Serv. 4951 (Vernon)." The same legislation, cited to the official bound volume, would be "Act of May 25, 1985, ch. 648, 1985 Tex. Gen. Laws 2398." This citation form eliminates confusion and, since it provides chapter numbers as well as page numbers, makes cross-reference from one publication to the other easier.

Substantively, the change from West Publishing to Bancroft-Whitney seems to have little effect upon the session laws. Unlike West, Bancroft-Whitney does not include the occasionally useful footnote references to the Vernon's Statutes numbering scheme (the familiar article numbers) that embellish the "advance sheets" for recently passed legislation. Instead, parallel references to the annotated civil statutes are found only in a table at the end of the last bound volume for the session. On the other hand, the more compact format may be a boon to those who lack library expansion space.

The real losers under the new regime of session law publishers are smaller law firms. In the past, it would have been possible to conserve library budgets by just retaining the *Vernon's Texas Session Law Service* "advance sheets" instead of acquiring the bound volumes. The need for citation to session laws is most commonly encountered in the first year or so after passage of the legislation, before the laws have been integrated into the "black" statutes. On the relatively rare occasions when an attorney might need to cite older session laws, citations could be "fudged" by just using the page number from the advance sheets. Now, librarians and attorneys will be put to the choice of buying the bound volumes or making a pilgrimage to the county law library whenever the need for precise citation arises.

James Hambleton, director of the State Law Library, writes and lectures on Texas legal research. He is president of the Southwestern Association of Law Libraries.

Jim Paulsen, an associate with the Houston law firm of Liddell, Sapp & Zivley, is a former briefing attorney for Texas Supreme Court Justice Ted Z. Robertson.



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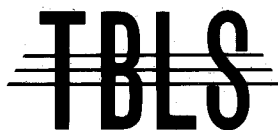
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TBJ- 2

Baylor Wins Competition

A Baylor Law School team won the Region 10 National Moot Court Competition sponsored by the Bar of the City of New York and the American College of Trial Lawyers on Nov. 15, 1986 in Dallas. Team members were Scott Edwards, Sid Murphy, and Liz Masters. Teams from 12 law schools located in Texas, Oklahoma, and Arkansas competed in the regional competition.

The Baylor team defeated South Texas College of Law in the semi-final round and Texas Tech University Law School in the final round. As regional champion, Baylor advances to the final round of the National Moot Court competition along with runner-up Texas Tech. The final round will be held in New York City on Jan. 26.

Masters won the award for best advocate in the competition. Profs. Bill Trail and Mike Rogers were coaches.



Members of the Baylor Law School Moot Court Team are (l-r): Scott Edwards, Liz Masters, Prof. Bill Trail (coach), and Sid Murphy.

South Texas Wins Second Place At Moot Court Competition

The South Texas Advocates won second place at the Hartford National Invitational Moot Court Competition held in November. The South Texas team argued against law schools from across the country and advanced to the quarter-finals where they defeated Salmon Chase of Kentucky. In the semi-finals St. John's lost to Florida State and South Texas defeated John Marshall of Chicago. In the finals South Texas lost to Florida

State by 3/10 of a point although South Texas had won the oral round.

Team members were John Ragland, Gus Pappas, Pat Taylor-Nork, Mark Hefter, and Ted Dravis.

Also in November, the South Texas Advocates finished third at the National Regionals at Southern Methodist University, winning all of their six oral rounds. Team members were Dale Jefferson, David Minton, and Scott Lannie.

Law School Plans Second Alumni Reunion

The University of Texas Law Alumni Association will host the Second Annual Law Alumni Reunion on the UT-Austin campus April 3-5, 1987.

This reunion follows on the heels of a highly acclaimed first effort in April 1986. Some 525 law school graduates, spouses, friends, and special guests gathered in Austin for that reunion.

Houston attorney David Beck heads the reunion planning committee, and some preliminary decisions have been made. Reunion organizers say they plan once again to hold a gala on Friday evening and to have a general assembly on

Saturday that offers a chance for university and law school officials to report to alumni on the state of the law school. Tours, special programs and seminars, an outdoor luncheon, and several recreational activities are already in the planning stages. The Texas Law Review Association banquet is planned for Saturday evening, and other student organizations have been offered an opportunity to schedule events.

Registration information can be obtained from the association office, 727 East 26th Street, Austin 78705, 512/471-5151, ext. 202.



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San Antonio Inn of Court Formed

An American Inn of Court, based on the English Inns of Court that train barristers, has been formed in San Antonio. The chapter is the 20th to form under initiative of former Chief Justice Warren Berger. It combines federal and state judges, lawyers of various experience levels, and students in an effort to improve professional skills of all members. The Inn's initial meeting was held Nov. 3, 1986 at St. Mary's Law School. Regular monthly meetings begin in January.

Officers were elected from 21 Masters of the Bench. Officers are: Chief United States District Judge of the Western District of Texas William S. Sessions, president; Terry Bickerton, counselor; and Lewin Plunkett, secretary/treasurer.

Members of the executive board of the Inn are Gerald Goldstein, Judge Jack Miller, and Jack Pasqual. Other initial masters of the bench are Lucien B. Campbell, George H. Spencer, Judge Fred Shannon, Franklin Houser, Phil Hardberger, Robert C. Scott, James L. Branton, Charles Butts, Judge David Peeples, Judge Solomon Casseb, Jr., Judge Edward C. Prado, Judge Carolyn H. Spears, Judge John Cornyn III, Prof. David Dittfurth, and Randy Tower.

Initial barristers are David Prichard, Charles Houlihan, Lewis Sessions, Joseph Casseb, Ricardo Cedillo, Mary Brennan, Judith Blakeway, Paul Green, Bill Ford, Phyllis Speedlin, Daniel Sciano, and Rudy Garza.

Initial student members are William A. Taylor, Dana Strippling, Michael Bassett, Robert Trudeau, Beth McAllister, Joan Fiorino, Jeffrey Goode, Earle Straight, Samira Mery, Richard Shreves, Doug Hearn, and Jonathan Cluck.

Dallas Association of Defense Counsel

The Dallas Association of Defense Counsel officers for the 1986-1987 term are: Travis E. Vanderpool, chairman; Clyde D. Bracken, first vice chairman; John H. McElhaney, second vice chairman; Sheree L. McCall, treasurer; and Robert H. Frost, secretary.



Borger Bar Association officers for 1986-1987 are Rosa White Pace, president; Betty Newby, vice-president; and Carrie Braymer, secretary-treasurer. At the association's November meeting, Pace presented a report on the 34th Annual Taxation Conference and the 1986 Tax Reform Act.

ABOTA National President Speaks at Dallas Chapter's Annual Dinner

James George, newly installed national president of the American Board of Trial Advocates (ABOTA), spoke at the Dallas Chapter of ABOTA's annual dinner, Nov. 13.

Held to honor the area local judiciary, the dinner was coordinated by Dallas Chapter President C.L. Mike Schmidt.

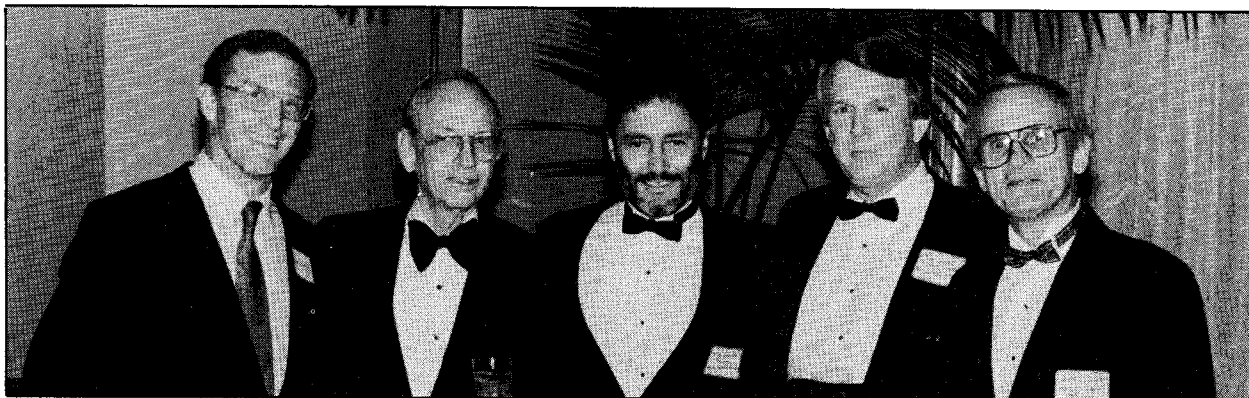
George spoke on the "Enhancement of Lawyer Image" to state Supreme Court judges, local judges, ABOTA members and chapter presidents from across the state. Attending ABOTA presidents included: Guy Allison, Corpus Christi; Schuyler Marshall, El Paso; and Jim Barlow, Fort Worth.

"ABOTA is working to communicate more with members of the media and with clients about the lawyer's role in the judi-

cary process," said Schmidt. "One of the keys to better understanding the trial process and the effects of a decision is a thorough knowledge of our position as lawyers in the legal process as a whole.

"Through effective communication with the media, we hope to put to rest a lot of misunderstanding and confusion about the legal process and help them cover trials and the issues those trials represent.

"By communicating with our clients about our roles in the process, we believe we can dispell many misconceptions and unrealistic expectations and make the process as a whole more effective," Schmidt added.



Pictured at the American Board of Trial Advocates (ABOTA) Dallas chapter annual dinner are (l-r): Don Bowers; Judge Ted Robertson; Mike Schmidt, ABOTA Dallas chapter president; John Collins, Dallas chapter treasurer; and James George, national ABOTA president.



Tarrant County Women's Bar Association officers for 1986-1987 are (clockwise from top left): Suzanne Jennings, Elizabeth Austin, Carol Ware Davidson, Vicki Ganske, Michelle Youngblood, Melinda Watts-Smith, Sarah Olin Grace (president), and Kelcie Hibbs. Not pictured are Pamela Arnold Owen and Debra Daniel.

Austin Black Lawyers Association

The Austin Black Lawyers Association hosted their first annual golf tournament on June 7 to raise money for the Virgil C. Lott Scholarship Fund. This scholarship is given to a high school graduate in honor of the first black graduate of the University of Texas School of Law. This year's recipient, Keith Brown, is the second person to receive the scholarship. Brown received \$900 toward defrayment of his freshman year expenses at UT. The scholarship was presented at a reception in the home of Judge Harriet M. Murphy.

The ABLA continues to enjoy a close relationship with black law students at UT through contact with the Thurgood Marshall Legal Society. ABLA and TMLS held their fourth annual picnic on Nov. 1. The lawyers triumphed in the athletic event and are the reigning volleyball champions.

New ABLA officers for 1987 were elected at the organization's annual meeting Nov. 5. Officers are: Arthur L. Walker, president; Lora J. Livingston, vice president; George Rubagumya, recording secretary; Norman M. Bonner, corresponding secretary; Andrea P. Bryant, treasurer; Judge Harriet M. Murphy, member-at-large; and Brenda P. Kennedy, immediate past president.

Association of Women Attorneys

The Association of Women Attorneys of Houston hosted their annual Judicial Reception on Oct. 1, 1986 at the Heritage Club to honor civil district court judges. Each year since 1978 the association has honored a different segment of the judiciary. The reception affords an opportunity for attorneys and judges to interact outside of the courthouse setting.

At the reception, the association also presents a scholarship to one female law student from each of the Houston law schools.

Scholarship winners are Terri L. Latham of Texas Southern University, Mary Ann Abbott Belath of South Texas College of Law, and Maurine Audel of the University of Houston.

Fourth Texas Intellectual Property Law Group Established in Austin

More than 50 members of the new Austin Intellectual Property Law Association (AIPLA) convened for a luncheon meeting in September 1986. Guest speaker was Lt. Gov. William Hobby. Other special guests at the luncheon were John M. Duncan, chairman of the State Bar Intellectual Property Law Section; Edward K. Fein, president of Houston IPLA; and Gus Van Steenberg, president of San Antonio IPLA.

Louis T. Pirkey, AIPLA president, served as host and presided at the luncheon meeting. AIPLA member Dudley Dobie introduced Lt. Gov. Hobby.

Other AIPLA officers, in addition to Pirkey, are David A. Roth, president-elect; David Mossman, secretary; Jerry M. Keys, treasurer; and Andrea P. Bryant, delegate to the National Council of Patent Law Associations.

AIPLA encourages membership not only among attorneys, but also offers associate membership to students, entrepreneurs, inventors, and others with a professional interest in intellectual property issues.

To date, four intellectual property law associations have been established in Texas. Associations are located in Houston, Dallas, San Antonio, and Austin.

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Meddling With Settling: Rebuttal Without Waiver

Linda L. Addison

By Linda L. Addison

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Question: *Does rebuttal waive error when evidence of a settlement agreement is admitted over objection?*

Answer: No.

Texas Rule of Evidence 408 excludes evidence of settlements and offers to settle.¹ Rule 408 does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice or interest of a witness or a party.²

An exception to the rule excluding settlement agreements is granted for agreements that cause misalignments of the parties, such as the "Mary Carter" settlements, which present false portrayals to the jury of the real interests of the parties.³ The benefit of this exception is normally granted to the party who will be harmed—the non-settling defendant.⁴ Whether a settlement agreement is a "Mary Carter" agreement is sometimes difficult to determine.⁵

In *Scurlock Oil Company v. Smithwick*,⁶ the Texas Supreme Court recently considered whether a party waives the admission into evidence of an inadmissible settlement agreement by attempting to explain or rebut it once it has been admitted into evidence over objection. In *Scurlock*, appellees called a non-party as an adverse witness to establish what the court of appeals characterized as an "unquestionably prejudicial quaranteed settlement agreement"⁷ from another trial, even after the witness denied knowledge of that agreement. The court of appeals wrote that although an agreement from another trial with different parties might be admissible under other circumstances, its admission under these circumstances was error.⁸ However, it held that *Scurlock* waived the error "by using inadmissible evidence for its own purposes" when it attempted to explain the settlement to the jury in closing argument.⁹

The Texas Supreme Court agreed that the settlement agreement was inadmissible.¹⁰ Explaining that impeachment is the

proper method by which relevant portions of Mary Carter agreements may be brought to the jury's attention, it wrote that there was absolutely no showing that the adverse witness, a former employee of Scurlock Oil Company, was in any way interested in the outcome of this case because of his former employer's settlement with another party.¹¹

But the Texas Supreme Court did not agree that Scurlock waived the error.¹² In reversing and remanding, it explained that "[h]aving properly objected, Scurlock was not required to sit idly by and take its chances on appeal or retrial when incompetent evidence was admitted...Scurlock was entitled to defend itself by explaining, rebutting, or demonstrating the untruthfulness of the objectionable evidence without waiving its objection."¹³

1. Tex. R. Evid. 408.

2. *Id.*

3. *City of Houston v. Sam P. Wallace and Co.*, 585 S.W.2d 669 (Tex. 1979); *Duval County Ranch Company v. Alamo Lumber Company*, 663 S.W.2d 627 (Tex. App.—Amarillo 1983, writ ref'd n.r.e.).

4. *See General Motors Corporation v. Simmons*, 558 S.W.2d 855 (Tex. 1977).

5. *See, e.g. Singleton v. Crown Central Petroleum*, 713 S.W.2d 115 (Tex. App.—Houston [1st Dist.] 1985, writ requested).

In *Singleton*, the Houston Court of Appeals explained that..."[t]he test for [a] Mary Carter agreement is whether the settling defendant had a financial stake in the success of the plaintiff's recovery such that the agreement altered the posture of the parties and induced the settling defendant to promote the plaintiff's cause of action against the non-settling defendant." *Id.* at 122. The *Singleton* court found that under the terms of the settlement agreement at issue, the financial interest of the appellant and the settling party were not the same, and that the trial court properly excluded the evidence of settlement from the jury. *Id.* at 122-23.

6. 29 Tex. Sup. Ct. J. 449 (1986).

7. *Scurlock Oil Company v. Smithwick*, 701 S.W.2d 4 (Tex. App.—Corpus Christi 1985), *rev'd in part*, 29 Tex. Sup. Ct. J. 449 (1986).

8. *Id.* at 9.

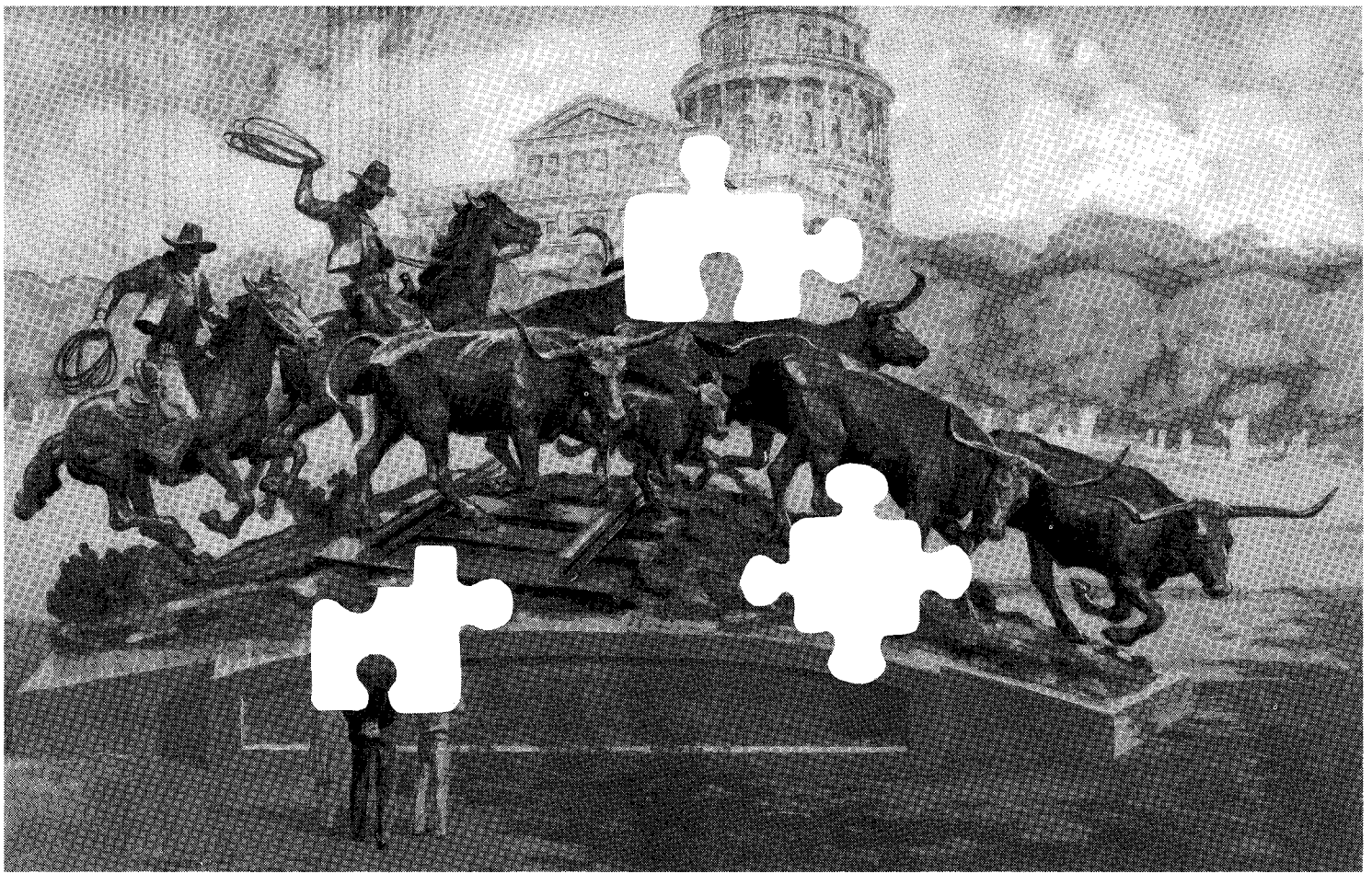
9. *Id.*

10. 29 Tex. Sup. Ct. J. at 451.

11. *Id.*

12. *Id.*

13. *Id.*



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The Success — and Failure — Of IRAC

Terri LeClerc

By Terri LeClerc

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- **Applying the specific facts to the rules** for the issue connects history to the present. Through the comparison of the facts of the present case against the facts of the earlier cases, the writer predicts the outcome of the present case.

- **The conclusion** leads the reader to a well-reasoned and accurate summary of the legal question.

The process of writing frequently entangles the individual steps involved in IRAC, taking them out of order and doubling back to the beginning, but the final formula is designed to create order out of chaos, to give substance to scattered notes and ideas. And that is useful. Once novices satisfy each element of IRAC, they can be confident that they have satisfied the basic task of the writing assignment. However, although the basic concepts of IRAC are necessary, they form only the basic skeletal bones of a discussion, bones that need some fleshing out before they represent a full body of discussion. This preliminary, basic skeleton is organized for the writer's convenience rather than the readers'. After writers have completed this skeleton, they should recognize it for what it is: an excellent beginning. Then, legal writers need to shift perspectives and consider the reading needs of their audience. A simple modification of IRAC will allow writers not only to cover the basics but to transform the basics into satisfactory prose. The modification puts the central message up front; that is, after stating the issue, legal writers summarize their message, the "what" about the legal question. The result is **IcRAC**.

IcRAC represents only a slight modification of the original formula but alleviates the frustration of reader guess-work because legal writers insert an anticipatory conclusion (c) after stating the issue. Readers therefore know, before digging into the argument, what the writer has to say. That is why successful legal writers, conscious of their audience's impatience, or curiosity, or hurried reading habits, already treat their readers to this introductory conclusion. They appreciate that legal readers are similar to readers of other nonfiction documents who want to know what they are going to read before committing time and effort to the reading. With the central idea at the beginning of the magazine article, memo, newspaper story, or brief, the readers can then move into the discussion that follows to learn "why"; with this prior knowledge, the reader can gain a better appreciation for the following argument.

Unfortunately, legal writers are reluctant to commit themselves to the "what" before they have carefully laid the groundwork with the "why." They offer numerous arguments against this modification:

- Our subject is too serious and too easily misunderstood for

a one-sentence or one-paragraph answer.

- We do not want to sound like there is only one answer to the memo question (or one reason for the opinion), and a short answer up front implies just that (i.e., the writers do not want to commit to an early conclusion).

- Readers need to understand the variables and see the historical development.

- Too strong a commitment to one answer defeats the purpose of both a memo (review all options) and opinion (explain the legal reasoning that produced the answer).

- No one will ever read my full memo again, and I worked hard on those 26 pages of writing.

- The conclusion deals with a specific set of facts the reader will not be familiar with yet.

- This modification makes the conclusion repetitive.

- Allowing readers to dictate a prose style to attorneys is ludicrous.

Each of these objections is a valid defense against change, but they ignore the primary rhetorical concern of legal writing: giving the readers the information they need. Legal writers have an obligation, therefore, to address the concerns these objections illustrate, to insert a short introductory conclusion when it is possible. This conclusion helps both writers and readers:

It satisfies readers who need a quick answer.

Example:

Question Presented: Did our client have a duty to warn his rescuer of the dangers around him?

Short Answer: No, our client's situation meets only two of the four required elements of the "duty to warn" test created by the judiciary.

This early conclusion helps writers arrange the discussion of the rules and also helps readers anticipate and follow the discussion. The early conclusion becomes a roadmap of the terrain to follow. In the above example, for instance, the writer will obviously begin the discussion with a list of the four requirements for duty-to-warn. The writer might initially grant that the client's case satisfies two elements of the test. But then the memo will obviously investigate the final two elements, explaining how the client's fact situation differs from the remaining two tests that the court requires.

This short conclusion gives a rhetorical emphasis to briefs. Without it, ineffective briefs waste introductory pages by detailing the history of a statute; buried beyond this history somewhere is the point the brief was intended to make. If brief writers do not begin with their central argument, readers find themselves constructing the argument, supplying their own ideas about how the statute works, or how each of the chronicled cases affects the present case. Although their research is important to the success of the argument, its role is supportive, and it should be located accordingly. The persuasive conclusion should be announced in the Statement of the Case (where applicable) and in the first paragraphs that introduce each issue. Judges who read these briefs want to know the issue and the writer's stand on the issue. After they have read the initial paragraphs, judges take their first impressions into the reading of the subsequent, supporting material.

Example:

...

II. The "Rescue Doctrine Theory"

The plaintiff acted in a "rash" and "imprudent" manner during the emergency, negligently creating his own peril. To invoke the "Rescue Doctrine" against the defendant Markus Lowes, the plaintiff will have to contradict the established facts of this case and prove that his conduct was neither

"rash nor imprudent." *Kennedy v. Delaware Leasing Company*, 441 F.2d 562, 564 (6th Cir. 1971).

Thus this short introduction helps both the judge and the attorney, establishing the limits and message of the document.

Implementing IcRAC is relatively simple because it does not change the basic order of IRAC, but merely adds an element — the short introductory conclusion. Office-wide memo forms should include a slot for "Brief Answer," just as they do for clerks and law students.

Example:

TO: Partner
FROM: Ace Graybiel
SUBJECT: Jones v. Beck and Progressive Oilmen of America

Question Presented: Does the federal court have jurisdiction in our case?

Short Answer: Yes, we satisfy both jurisdiction requirements: the money involved amounts to more than \$10,000, and there is complete diversity of citizenship at the time of filing.

If members of a firm cannot agree on a short answer slot, writers should introduce the issue and summarize the answer within the first paragraph. After satisfying the reader about the "what" of the legal document, the writer can then return to IRAC and trace the development of the research that produced the answer.

Example:

Question Presented: Does the federal court have jurisdiction in our case?

Discussion: We satisfy both jurisdictional requirements. The amount involved in this controversy exceeds \$10,000, and we can establish complete diversity of citizenship between the parties at the time of filing. Thus we satisfy both U.S.C. 1332(a)(1) (1982) requisites for federal jurisdiction.

There is no dispute over the amount involved in this case. Plaintiff ...

This method of forcing the conclusion into the foreground, either in a special slot or in the introductory paragraph, could have the pleasant side effect of adding order into the researched material. In the above example, the writer dismisses the first jurisdictional requirement by presenting undisputed facts. That dismissal allows him to concentrate on the second element, the diversity of citizenship. This organization is anticipated by the short conclusion. How many attorneys have read through the tedious details of 15 cases, only to discover in the final pages that a 1986 statute overrides the earlier cases?

Attorneys can see the effect of IcRAC on client letters also. Client letters may create a different problem, however. After the introduction of the legal question the client has asked, writers have to use their judgment about the up-front answer. Clients want to know answers; that is why they have asked questions. However, attorneys may decide that bad news needs to be couched. What attorney could be comfortable with a harsh and jolting salutation: "Dear Joe, Sorry the letter has taken so long, but we lost the fight and you lose the farm." In client situations, the real question asked may be, "What's happening, and what can we do about it?"

Also, clients with legal staffs of their own frequently ask

Texas Bar Journal

Legal Articles Guidelines

Each legal article submitted to the *Texas Bar Journal* must conform to the following guidelines:

Length: no more than 3,000 words, excluding footnotes. Generally, approximately 12 typewritten, double-spaced pages will equal 3,000 words.

Footnotes: must be concise and be placed at the end of the article.

Form: must be typewritten, *double-spaced* on 8½" x 11" paper; five (5) copies of each article must be provided. Only completed articles will be considered (no abstracts, article outlines or ideas will be considered).

Content: wide-ranging topics are accepted, as long as they pertain to the Texas legal profession and are of interest to a large number of Texas practitioners. *Not acceptable* are articles dealing with pending litigation, or current political or religious issues or personalities. Articles which advocate legislation or a legislative position are published only when approved by the State Bar's Legislative Committee and/or Board of Directors.

Review: The Editorial Committee, comprised of three members of the State Bar Board of Directors, has sole discretion over the acceptability of legal articles for the *Bar Journal*. (The *Bar Journal* staff acts as liaison between the committee and authors, and schedules the publication of accepted articles.) Written reviews of articles are *not* offered to authors by the Editorial Committee.

Biographical information/photo: each author of an accepted article must supply the *Texas Bar Journal* a recent black and white photograph of himself/herself and a brief (50 words or less) biographical sketch, both of which appear in conjunction with the article.

Update: approximately six weeks prior to the publication of an accepted article, the author is notified of the publication date by the *Bar Journal* staff. The author is asked to provide any necessary updates/supplementation for the article prior to the editorial deadline. Each article is scheduled for publication by the *Bar Journal* managing editor. Scheduling of articles is based on the timeliness, subject matter, length and inventory of approved legal articles.

Due to the large number of legal articles submitted to the *Texas Bar Journal*, the Editorial Committee generally takes 30 to 90 days to offer its judgment on each article. After an article has been approved, it is usually published in the *Bar Journal* within three to six months.

All communications regarding legal articles should be directed to Sandra Williams, Administrative Assistant, *Texas Bar Journal*, P.O. Box 12487, Capitol Station, Austin, Texas 78711, 512/463-1522.

multi-layered questions that require multi-layered answers that must be approached separately. But even within those layers of questions, the client deserves early answers. It is curious that many attorneys ignore the emphasis on reader-oriented prose when the client is a corporation; perhaps the writers assume that the readers, members of another law office or a corporation's legal counsel, do not want to find the answer quickly as a layman might.

Just as attorneys can improve their written work that judges have to read, so also can the judges easily satisfy attorneys' reading needs by employing IcRAC:

Example:

State v. Wood

Wood appeals from her conviction for assault. We affirm. Wood was convicted for placing the tip of her umbrella against the back of a blind man and threatening to shoot him if he did not turn over the money he had made playing his banjo. He fainted and she ran away. She claims that the absence of a real gun frees her from guilt for assault. We disagree. A person is guilty of assault if she intentionally puts another in fear that she may cause him serious bodily injury or death. A genuine handgun is not likely to make much difference to a blind man.

If all legal writers modify their prose by placing their message at the beginning, those readers who actually are patient, unhurried, and not curious about the outcome could still relish each word on the legal page, but they would have to resort to detective novels to find a surprise ending. As legal writers, then, you owe your readers the courtesy of some early signal about content, so that they do not have to flip to the end to discover what you are going to say.

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High blood pressure is serious business.



WE'RE FIGHTING FOR
YOUR LIFE



**American Heart
Association**

That's one way of looking at it. Another way is to ignore it and hope it goes away. Or tell yourself it's hopeless. And that's called playing with fire. For absolutely no good reason. Because with all the questions that still remain unanswered about this potentially fatal disease, there's one thing we know for certain. And that is that high blood pressure can usually be controlled. By following your doctor's advice. By exercising regularly to control weight. By eating the right foods. By cutting down on salt in your diet. And by sticking to your prescribed medication. If you've got high blood pressure, talk to your doctor about getting started on a program that will lower it. Because if you don't take it seriously today, it could take you by surprise tomorrow.

C.S. Yancey

Charles S. Yancey, 77, of So. Harpswell, ME died Feb. 22, 1986.

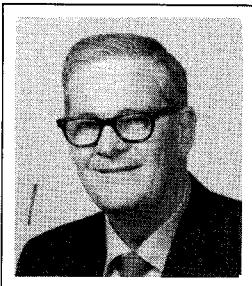
Born in Dallas, Yancey graduated from Yale University in 1931 and Harvard Law School in 1936. Yancey was admitted to the New York Bar in 1937 and the Texas Bar in 1941.

From 1937 to 1941, Yancey practiced law with the New York firm of Barry, Wainwright, Thatcher & Symmers. In 1941 he began practice with the Dallas firm of Robertson, Leachman, Payne, Gardere & Lancaster. From 1946 to 1960, Yancey was a partner in the Dallas insurance company of T.A. Manning & Sons. Yancey was vice president of Hinton & Locke, Dallas mortgage bankers, and was also active in the development of Southwestern Fire and Casualty Co.

Yancey served in the U.S. Navy during World War II. He earned 14 battle stars and was awarded the Bronze medal. After the war Yancey continued his involvement through the Naval Reserves. He was commanding officer of the Naval Reserve Surface Battalion and director of the Naval Reserve Officers School. He became a captain in 1952 and retired in 1961 after 30 years of service.

Yancey was president of the Dallas chapter of the Navy League, and was a member of the New York Bar, the Dallas Bar Association, the Retired Officers Association, Phi Kappa Psi, the Dallas Club, Brook Hollow Golf Club, and the Idlewild and Terpsichorian Clubs. His hobbies were sailing and hunting.

Yancey is survived by his wife, Anne Richardson Yancey, Merriconeag Rd., So. Harpswell, ME 04079; a son, C. Stephen Yancey, Jr.; and a daughter, Sherod Anne Yancey.



J.D. Eades

Jack David Eades, 69, of Dallas died Dec. 15, 1985.

A Dallas native, Eades received an LL.B from Southern Methodist University in 1939 and was admitted to the Texas Bar that same year.

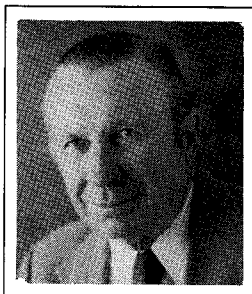
Eades was a major in the Army Air Force from 1942 to 1946 and

was a colonel in the U.S. Army Reserve, J.A.G. Corps. from 1946 to 1971.

Eades practiced law with the Dallas firms of Eades & Eades from 1939 to 1942; Lefkowitz, Green, Ginsburg, Eades & Gilmore from 1954 to 1965; and Clark, West, Keller, Butler & Ellis from 1965 to 1985. Eades also served as V.A. claims attorney in Dallas from 1946 to 1954.

Eades was licensed to practice before the U.S. Supreme Court and the U.S. Court of Military Appeals. He was a member of Kappa Alpha and Delta Theta Phi. He also was a member of University Park United Methodist Church where he served on the administrative board and was president of the Mr. and Mrs. Sunday School Class.

Eades is survived by his wife, Rosemarie F. Eades, 3412 Marquette, Dallas 75225; a son, Jack David Eades, Jr.; a daughter, Lorraine Elizabeth Eades; a sister, Mrs. E.W. Awalt of Longview; and two grandchildren, Riana Eades and Taylor Eades.



K. Peery

Kearby Peery, 75, of Wichita Falls died March 6, 1986.

A native of Wichita Falls, Peery was a graduate of SMU and attended law school at Cumberland University and the University of Texas. He received his law degree from the University of Texas and was admitted to the

Texas Bar in 1933.

With the exception of service in the U.S. Army Air Corps from 1943 to 1946, Peery practiced law in Wichita Falls from 1933 to 1986. He was Wichita Falls city attorney from 1947 to 1949.

Peery was a member of the Wichita County Bar Association (president, 1959 to 1960), the Texas Trial Lawyers Association (president, 1960), and the National Association of Trial Lawyers. He was chairman of the State Bar of Texas Tort & Compensation Section in 1958, and was a fellow in the International Academy of Trial Lawyers.

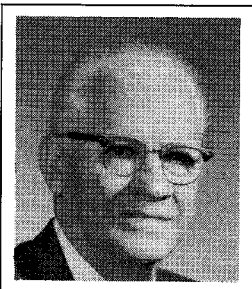
Peery was a board member of the Wichita Club, president and director of the Wichita Falls Country Club, and a member of First Baptist Church in Wichita Falls.

Peery contributed to numerous legal periodicals and served for many years as guest lecturer at State Bar seminars. He lectured at the University of Texas School of Law in the school's distinguished guest lecturers series, and in 1958 was guest lecturer at the Texas Judicial Conference where he advocated many reforms which have since been implemented.

Peery's grandfather, J.G. Kearby, was a former judge and lieutenant governor of Texas. Peery's nephew, Tom P. Briggs, is an attorney in Dallas.

Peery's hobbies included golfing, flying, reading, and fishing.

Peery is survived by his wife, Florence Owen Peery, 2628 Bretton Rd., Wichita Falls 76308; a daughter, Patricia Wood of Dallas; one sister, Ellaouise deBoer of Dallas; and three grandsons.



B. Allen

Judge Bruce Allen, 78, of Waxahachie died Feb. 4, 1986.

A native of Freestone County, Allen graduated from Cumberland Law School in 1939 and was admitted to the Texas Bar in 1940.

Allen served as a member of the Texas House of Representatives, 1941 to 1942; Ellis County judge,

1943 to 1946; assistant attorney general, 1947 to 1952; and Ellis County district attorney, 1955 to 1969. He was judge of the 40th District Court from 1969 until his retirement in 1975.

Allen was a member and deacon of Waxahachie First Baptist Church and was chairman of deacons and superintendent of Sunday school. He taught the Men's Downtown Bible Class for more than 30 years.

Survivors include his wife, Rhudelle Allen, 114 Monticello, Waxahachie 75165; a son, Bill Allen (also a member of the Texas Bar); a brother, George Allen; a sister, Lorraine Phillips; four grandchildren; and three great-grandchildren.

L.F. Sanders

Levi F. Sanders, 77, of Canton died Feb. 13, 1986.

A native of Ben Wheeler, TX, Sanders attended East Texas State Teachers College, the University of Texas, and Southern Methodist University School of Law. He was admitted to the Texas Bar in 1944.

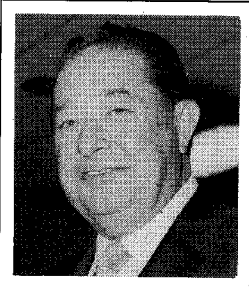
Sanders practiced law in Canton from 1944 to 1986, and served as Van Zandt County Judge from 1937 to 1944. He was chairman of the Van Zandt County Democratic Executive Committee from 1954 to 1977.

Sanders taught school in the Primrose Independent School District from 1929 to 1937, and also farmed for a brief time.

Sanders was a member of the American Judicature Society; Grievance Prosecuting Committee for District 1A, 1st Bar District; Committee on Admissions, District I; Van Zandt County Bar Association; American Bar Association; Pine Lodge A.F. & A.M., Ben Wheeler; Wills Point Commandry, Wills Point, TX; 12th Masonic District (District Deputy Grand Master); Canton Lion's Club (president); Canton Chamber of Commerce; Canton Trail Riders; and Phi Alpha Delta. Sanders was a scoutmaster for Troop 378 in Canton. He belonged to Canton First United Methodist Church and served as a district steward, trustee, administrative board member, and lay leader. While county judge, Sanders was chosen Man of the Year in East Texas.

Sanders' hobbies and special interests included antiques, contract bridge, horses, and gardening.

Sanders is survived by his wife, Veta Sanders, P.O. Box 416, Canton 75103; a son, Canton attorney Bobby Sanders; one grandson; and one granddaughter.



W.L. Wise, Jr.

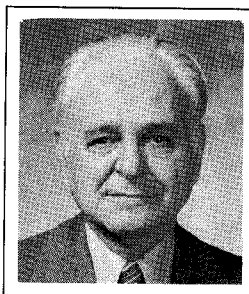
William L. Wise, Jr., 71, of Idabel, OK died May 16, 1986.

A native of Fort Worth, Wise was a graduate of Texas Christian University and the University of Texas Law School. He was admitted to the Texas Bar in 1938.

Wise practiced law until entering the U.S. Air Force in 1941, where he was a member of the National Counter Intelligence Corps. Wise managed a trucking firm in Fort Worth from 1945 to 1961. He moved to Idabel in 1962, where he was a rancher from 1962 to 1968 and president and stockholder of Life Insurance Co. of America from 1968 to 1971. In 1971 Wise purchased the *McCurtain Daily Gazette* in Idabel, which he operated until 1973.

Wise was president of the Texas Motor Transportation Association from 1950 to 1951, a member of the American Bar Association and the Fort Worth Rivercrest Country Club, and past-president of the Fort Worth Steeple Chase Club. He was a member of University Christian Church in Fort Worth and First Christian Church in Idabel. Wise's father, William L. Wise, Sr., was also a lawyer.

Wise is survived by his wife, Irene Wise, Rt. 3, Box 625, Idabel, OK 74745; two daughters, Nona Louise Carmichael and Martha Jayne Baum, both of Houston; and three grandchildren.



C.C. Randle

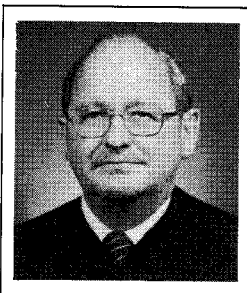
Clarence C. Randle, 78, of Plano died Jan. 1, 1986.

Randle attended Midwestern and Trinity Universities and received his LL.B from Southern Methodist University in 1931. He was admitted to the Texas Bar that same year.

Randle served as Ellis County judge from 1937 to 1943 and was district attorney from 1943 to 1947. He became president of Naughton Farms Inc. of Waxahachie in 1950, and was involved in the organization of Trego Industries, Inc. of Red Oak.

Randle was president of the North Texas County Judges and Commissioners Association, vice president of the State County Judges and Commissioners Association, president of the Fort Worth Federal Bar, a member of Hella Temple Shrine, and a 32nd degree Mason. He was a member of Highland Park Presbyterian Church.

Randle is survived by his wife, Adelaide Randle, 17133 Club Hill Dr., Dallas 75248; a son, attorney Stephen Graham Randle of Colorado Springs, CO; a daughter, Carol Anderson of Dallas; a sister, Mrs. Lewis Price; and five grandchildren, one of which, Jay Randle Houren, is an attorney.



W.E. Ward

Judge William E. Ward, 69, of El Paso died Feb. 22, 1986.

Ward, an El Paso native, attended the Texas College of Mines (now the University of Texas at El Paso), and in 1939 graduated with honors from the University of Texas School of Law. He was admitted to the Texas

Bar that same year.

From 1939 to 1950, with the exception of World War II, Ward practiced law with R.E. Cunningham in El Paso. From 1950 to 1955, Ward practiced law with the late Judge S.J. Isaacks in El Paso. In 1955 Ward was appointed judge of the 34th Judicial District by Gov. Allan Shivers, and in 1969 was appointed by Gov. Preston Smith to the Eighth Court of Civil Appeals, where he remained until his death.

During World War II Ward was a captain in the U.S. Army 45th Field Artillery Battalion.

Ward was president of the El Paso County School Board from 1948 to 1950, and was a member of the El Paso County and American Bar Associations. He also belonged to the El Paso Historical Society.

Ward is survived by his wife, Mary J. Ward, 416 Hollydale, El Paso 79912; two sons, Midland attorney William E. Ward, Jr. and Bradley Ward, also of Midland; one daughter, Vaughn W. Branom of Houston; one stepson, Jack Valdespino of Encino, CA; one stepdaughter, Mimi V. Thompson of El Paso; five grandchildren; and one great-grandchild.

J.W. Walsh

Joe Wayne Walsh, 53, of Brownsville died Jan. 1, 1986.

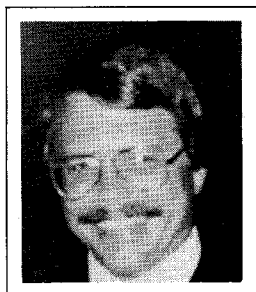
Walsh earned a degree in Journalism from the University of Arkansas in 1953 and a law degree from St. Mary's University in 1958. He was admitted to the Texas Bar in 1958.

Walsh served in the U.S. Army, Spc. 3, at Fort Hood and Fort Sam Houston from 1955 to 1956.

Walsh was assistant district attorney in Brownsville from 1959 to 1961. In 1961 he joined Col. L.G. Matthews in private practice in Brownsville, and took over the practice following Matthews' retirement. At the time of his death, Walsh was in private practice with his son, Lawrence A. Walsh. Walsh was director of Sunrise Bank, Brownsville, from 1979 until his death.

Walsh was a member of the Cameron County Bar Association and First United Methodist Church of Brownsville. He owned a wholesale tropical plant nursery.

Walsh is survived by his wife, Lorraine B. Walsh, 2013 Palm Blvd., Brownsville 78520; a son, Lawrence A. Walsh; four daughters, Cynthia W. McCarty, Carolyn W. Birky, Cheryl W. Patterson, and Lesley Anne Walsh; his mother, Mattye Walsh; and two brothers, Charles Walsh and James Walsh.



G.G. Rogers

Gerald Glasson Rogers, 43, of Houston died Jan. 3, 1986.

A native of Corpus Christi, Rogers received a BS in mechanical engineering in 1964 from Texas A&M University and a JD in 1971 from the University of Houston Bates School of Law. He was admitted to the Texas Bar in 1971.

Rogers was senior attorney and regional counsel for the corporate office of Dresser Industries.

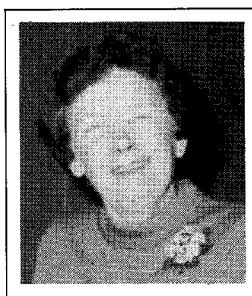
Rogers served in the U.S. Army Corps of Engineers and received the Bronze Star for service in Viet Nam.

He was a member of the Houston Bar Association, American Bar Association, and the International Bar Association. Rogers was also a member of the American Society of Mechanical Engineers, the Texas A&M Ross Volunteers, and the Texas A&M Twelfth Man. He was a board member of the Downtown Houston YMCA Operating Committee, West University Little League, and F.U.N. Football League.

Rogers was a Rosarian and a member of St. Lukes United Methodist Church in Houston. He was involved with youth sports and education, and enjoyed travel and running.

A scholarship fund has been established at Texas A&M in Rogers' name and donations may be sent to the "Gerald Glasson Rogers Memorial Scholarship Fund," payable to the Texas A&M University Development Foundation.

Rogers is survived by his wife, Jonell Yeager Rogers, 2203 Watts, Houston 77030; a son Glasson Yeager Rogers; a daughter, Price Rogers; his father, Gerald Y. Rogers of Bay St. Louis, MS; and his grandparents, John W. and Ima Lee Glasson of Corpus Christi.



N.G. Springfield

Lt. Col. Nora Gray Springfield, 76, of San Antonio died Sept. 18, 1986.

A native of Kosse, TX, Springfield was an honor graduate of the University of Texas Law School. She was admitted to the Texas Bar in 1942, and was also admitted to practice law before the Supreme

Court of the United States, the United States Court of Military Appeals, and the Supreme Court of Texas.

Springfield's military career included assignments in the Office of the Judge Advocate General, where she supervised Army legal assistance programs worldwide. She was Women's Army Corps Staff Advisor to the Commanding General, U.S. Army, Europe, and earlier to the Commanding General, 2nd U.S. Army.

Springfield also served as assistant director of academic training at the Army Language School, legal counsel in Dachau for war crimes trials in Germany, and legislative counsel in the Office of Legislative Liaison.

Springfield served on the national staff of Girl Scouts U.S.A. from 1962 to 1973, and held regional directive posts for the Girl Scouts in Atlanta, GA and San Mateo, CA.

Springfield was legislative chairperson of the San Antonio Mary Mount Chapter of the American Association of Retired Persons (AARP). She also was state legislative chairperson of AARP, area vice-president of the National Legislative Council in Washington, and a member of the AARP National Board of Directors. From 1981 to 1983 Springfield was a delegate to the White House Conference on Aging.

Springfield was a consultant on organization and management for the National Student Nurses Association, chairperson of the scholarship committee of the San Antonio de Bexar chapter of the Daughters of the American Revolution, and a member of the Albert Sidney Johnston Chapter of United Daughters of the Confederacy, the Retired Officers Association, and the Military Order of the World Wars.

She was a member of the Marlin United Methodist Church, where she established a trust fund for youth work in memory of her mother.

Springfield traveled throughout the world and was a collector of interesting and beautiful objects. Her last trip was to China.

Springfield is survived by four brothers, Wyche Springfield, 715 Oak Lane, Marlin 76661, Rev. Hansel Springfield of Warren, and B.F. Springfield and Oscar Springfield, both of Dallas; a sister, Ruth Patton of Wharton; and several nieces and nephews.

Memorial Contributions Welcomed by Foundation

Contributions to the Texas Bar Foundation can memorialize deceased friends, relatives, colleagues, community leaders, or outstanding personalities in the field of law.

Donations may be made by an individual, law firm, business, or corporation.

Please send your memorial contributions to the Texas Bar Foundation, P.O. Box 12487, Capitol Station, Austin 78711.

J.W. Moore

Joseph W. Moore, 84, of Houston died Jan. 8, 1986.

Moore, a native of Austin, received his LL.B from the University of Texas and was admitted to the Texas Bar in 1923.

Moore practiced law in Houston for more than 50 years, primarily in the areas of civil litigation and oil and gas. At his death, he was of counsel to the firm of Fouts & Moore.

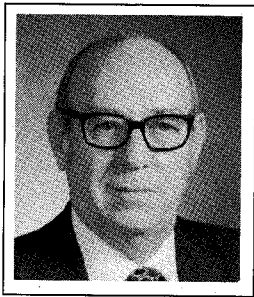
At the age of 41, Moore volunteered for World War II duty and served in the U.S. Army.

Moore was a football letterman at UT from 1920 to 1922, and an award in his name is given annually to an outstanding member of the UT team.

Moore belonged to the Houston Bar Association, and served on the association's Ethics Committee in 1936. He was director of the committee in 1940. He was also a member of the American Bar Association, River Oaks Country Club, Houston Club, Order of the "T", and Kappa Alpha Order.

Moore was a director of Cameron Iron Works and J.S. Abercrombie Mineral Company.

Moore is survived by a sister-in-law, Mrs. Fred Moore of Houston; two nieces; and three cousins.



A.S. Brown

Judge Archie S. Brown, 73, of San Antonio died March 13, 1985.

A San Antonio native, Brown attended Texas A&M University and the University of Texas. He received his LL.B and JD from St. Mary's University and was admitted to the Texas Bar in 1936.

Brown was in private practice from 1936 to 1939, and served as Bexar County district attorney from 1939 to 1942. After serving in the U.S. Navy during World War II, Brown resumed private practice. In 1959 he was elected judge of the 144th District Court, Bexar County, where he remained until 1974. From 1975 to 1977 Brown was a special commissioner of the Texas Court of Criminal Appeals.

Brown was president of the Alamo Area Council of Boy Scouts, 1954; King Antonio of San Antonio, 1955; a trustee of St. Mary's Law School, 1950 to 1959; and a law instructor at St. Mary's, 1947 to 1974.

Brown was president of the San Antonio Bar Association in 1958; vice-chairman and reporter, State Bar Committee on Revision of the Penal Code; vice-chairman, State Bar Section on Criminal Law and Procedure; faculty advisor, National College of State Trial Judges, 1969 to 1972; chairman, Bexar County Legal Aid Association Bail Bond Committee, Night Magistrate Board, Bexar County Bail Bond Board, and State Bar Committee on Penal Code Pattern Changes; presiding judge, State Criminal Courts of Bexar County, Jan. 1, 1970 to July 1, 1971 and Jan. 1, 1973 to July 1, 1973; and judge, Bexar County Juvenile Court.

Brown was a member of the American Bar Association, the American Judicature Society, the Federal-State Judicial Council, Annual Seminar on Crimes and Corrections Planning Committee, and the Advisory Committee to Alcoholic Safety

Action Project. He was president of the St. Mary's University Ex-Student Association from 1963 to 1964, and belonged to St. Mark's Episcopal Church.

Brown also belonged to the Texas Cavaliers, San Antonio German Club, San Antonio Country Club, and Sigma Chi fraternity.

Brown is survived by his wife, Margaret T. Brown, 185 Terrell Rd., No. 604, San Antonio 78209; a son, attorney Dick Terrell Brown; two daughters, Anne Brown Crutchfield and Juliet Brown Cosgrove; and three grandchildren.



B.M. Levy

Ben Michael Levy, 42, of San Antonio died Jan. 9, 1986.

Levy received his law degree from the University of Texas in 1968 and was admitted to the Texas Bar that same year. He practiced law in Austin from 1968 to 1970, and in San Antonio from 1970 until his death.

Levy was active in civic affairs and was on the board of the National Conference of Christians and Jews. He was also involved with San Antonio Leadership 1984, the Jewish Social Service Federation of San Antonio (recipient of the federation's 1982 Young Leadership Award), and the Real Estate Advisory Council of San Antonio Junior College. Levy was named Boss of the Year by the San Antonio Secretaries Association.

Levy was a member of Temple Beth El. He enjoyed being with his family, fishing, tennis, jogging, traveling, and real estate investment.

Levy is survived by his wife, Heidi Levy of San Antonio; a son, Brian Levy; a daughter, Jennifer Levy; a brother, Steve Levy; one niece; and one nephew.

In Memoriam

These notices are published immediately after reports of death are received. Memorials will be published later.

BAUERLE, FRANCIS J., Dallas, Oct. 1, 1986
 BOONE, ROBERT E., Georgetown, Oct. 15, 1986
 BUSHONG, JACK L., San Antonio, Sept. 26, 1986
 COLLIER, JAMES E., Colorado Springs, CO, Oct. 9, 1986
 EIDMAN, KRAFT W., Houston, Oct. 19, 1986
 GROSSHOLZ, PAUL G., Houston, Aug. 23, 1986
 HERRERA, JOHN J., Houston, Oct. 12, 1986
 JACKSON, JOHN N., Dallas, Sept. 22, 1986
 MAYS, EUGENE D., Baton Rouge, LA, May 16, 1986
 MCINERNEY, WILLIAM L., Dallas, Oct. 16, 1986
 PATERNOSTRO, SAMUEL B., Dallas, June 26, 1986
 PHILLIPS, JON TY, Colleyville, Aug. 20, 1986
 SOLSBERY, ALEX D., Roswell, NM, July 6, 1986
 WILLIAMS, JAMES A., Blanco, Oct. 14, 1986

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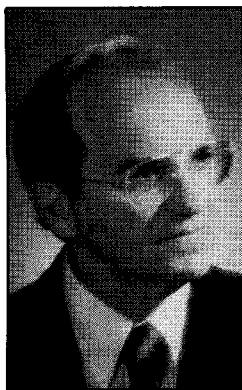
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The Erudite Judge, The Tactful Judge, And The Judge Of Considerable Experience

Jerry Buchmeyer

By Judge Jerry Buchmeyer

Judges should, of course, be thorough and tactful and attentive¹—as illustrated by three forensic fables by "O": *The Erudite Judge and the Question of Doubtful Admissibility*; *The Tactful Magistrate and the Much Respected Colleague*; and *The Judge Who Closed His Eyes*.²

The Erudite Judge considered himself Rather Hot Stuff and, at the slightest opportunity, would "Enrich the Law Reports with a judgment in which he discussed All the Authorities, Exposed the Fallacies of Deceased Members of the Bench, and Generally Cleared Things Up for Posterity." During one trial, the plaintiff's counsel asked the witness what the Charwoman had said when the witness told her the plaintiff had fallen over the pail on the stairs. Naturally, the Erudite Judge directed the witness not to answer the question—and, after a Protracted Argument, adjourned so he might Consider the Matter Fully.³ The results:

"The Next Day the Erudite Judge Loosed Off a Splendid Bit of Work. No Aspect of the Law of Evidence was Left Untouched. Beginning with the Pandects of Justinian, the Erudite Judge Took his Hearers through the Canon Law and

the Year-Books, and thus Traced to its Source the Doctrine of the Inadmissibility of Hearsay Evidence. By Eleven Forty-Five the Erudite Judge had Got to *Whitelock v. Baker* (13 Ves. 514), Declarations by Deceased Persons, Inscriptions on Tombstones, and the Facts Properly to be Regarded as *Res Gestae*. At Long Last, when the Stenographers were Shewing Signs of Exhaustion, the Erudite Judge Reached the Conclusion that the Question was Admissible.

"The Witness having Returned to the Box Counsel for the Plaintiff Once More Enquired: 'What did the Charwoman Say when you Told her that the Plaintiff had Fallen Over the Pail on the Stairs?'

"The Witness Replied that the Charwoman hadn't said Nothing. He Added that he wasn't surprised, which the Charwoman was as Deaf as a Post."

The Tactful Judge, who had dined Very Comfortably the night before with a Much-Respected Colleague, convened court to deal with the Business of the Day. To his surprise, the first defendant was his Host of Last Night—who had continued his Merry-Making into the Wee Hours and had been arrested with other Drunk-and-Disorderlies. The situation was Distinctly Awkward, particularly since the Much-Respected Colleague had given his real name and address. However:

"The Tactful Judge did not Lose his Head. Sternly Addressing the Culprit as *John Marmaduke Bundlepump* (a Name which Occurred to him on the Spur of the Moment), he told the Much-Respected Colleague that his Attempt to Conceal his Identity, Based as it was upon a Superficial Facial Resemblance to a Public Servant of Unblemished Reputation, was as Mean as it was Dishonest; and that in All the Circumstances he Could not Inflict a Smaller Penalty than a Fine of Ten Pounds. The Defendant must also Pay the Doctor's Fee. He Hoped it would be a Warning. It was."

The Judge of Considerable Experience was trying a Case of Unexampled Dullness. The plaintiff's counsel opened by droning a multitude of authorities, including the well-known decision of the House of Lords in *The Overseers of the Parish of Criggleswick v. The Mudbank-Super-Mare Docks & Harbour Board Trustees & Others*. The Judge, who had never been So Bored in his whole Professional Life, fell into a Gentle Doze which soon developed into a Profound Sleep. Suddenly, he was aroused by the cries of "Silence" with which the bailiff precluded the Coming Judgment: the case was over and the Judge had Absolutely No Notion of what the counsel for the defendant had argued. Was the Judge dismayed?

"Not at all. He Assumed a Look of Lively Intelligence and Said that, as he had Formed a Clear Opinion, no Useful

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Purpose would be Served by His Reserving his Judgment. He Admitted that During the Course of the Excellent Arguments which had been Addressed to him his Opinion had Wavered. But, After All, the Broad Question was whether the Principle so Clearly Stated in the House of Lords in *The Overseers of the Parish of Criggleswick v. The Mudbank-Super-Mare Docks and Harbour Board Trustees & Others* Applied to the Facts of the Present Case. On the Whole, despite the Forceful Observations Made on Behalf of the Defendants, to which he had Paid the Closest Attention, he Thought it Did. It was Therefore Unnecessary that he should Discuss a Variety of Topics which, in the View he Took Became Irrelevant. There would, accordingly, be Judgment for the Plaintiffs, with Costs; but, as the Matter was One of Great Public Interest, there would be a Stay of Execution on the Usual Terms. The Judgment, which was Appealed Against in Due Course, was Affirmed both in the Court of Appeal and the House of Lords; the Lord Chancellor Commenting, in the latter Tribunal, on the Admirably Succinct Manner in which the Experienced Judge had Dealt with a Complicated and Difficult Problem."⁴

Coming Next Month: *The Witnesses*

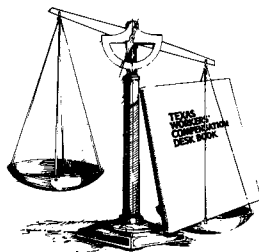
1. Judges should also furrow their brows a lot during trial (brow-furrowing being a required course at the school for new federal judges conducted by the Judicial Center in Washington, D.C.).

2. From *Fifty Forensic Fables* by "O" (the pen name of Theobald Mathew), published by Butterworth & Co. (London 1961).
3. Although not as fully as the trial judge in a sodomy case, *North Carolina v. Crouse*, 22 N.C. App. 47 (N.C. 1974): "Defendant brings forward numerous assignments of error directed to the court's instructions to the jury. Again, as he did in *State v. Gray*, 21 N.C. App. 63, 203 S.E.2d 88, the trial judge gave the jury his understanding of the 18th and 19th Charters of the First Book of Moses, called Genesis. He also recited some of the statutory history of the act with which the defendant was charged and the genealogy of English royalty. Although the Judge's monologue was inappropriate, we do not believe the error was prejudicial to the defendant.
4. Sleeping Judges in Texas need not recover so quickly—since there is authority that sleeping during trial is harmless error unless the complaining attorney can prove just when you went to sleep. In *Jackson v. State* (May 1982), the Texas Court of Criminal Appeals rejected the claim that Jackson's conviction for resisting arrest should be reversed because the trial judge "had fallen asleep during the trial and did not hear an objection by the defense attorney." Although it was conceded that "the trial judge did momentarily lapse into a subconscious state," the record did not reflect when this occurred—whether "immediately prior to the objection being made or at some [other] point." The Court realistically concluded: "Though such judicial conduct can never be condoned, nevertheless, given the proper facts, it may be understandable." (*Dallas Morning News*, May 20, 1982)

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Index to Ethics Opinions

From time to time your General Counsel's Office receives requests for ethics opinions regarding different areas of the law. It became obvious that a need existed to publish an overall index of all ethics opinions previously issued by the Professional Ethics Committee of the Supreme Court of Texas. Accordingly, what follows in this issue of the *Bar Journal* is an index of those opinions published to date. Also published is a list of sources where those ethics opinions may be located for reading and review.

I am very grateful to Linda Acevedo and Karen Jones of the General Counsel's Office for putting together this index to ethics opinions.

Ethics opinions are also available through the Professional Development Department Opinions Service at the State Bar headquarters.

For information about ordering ethics opinions refer to the Texas Lawyer's Civil or Criminal Weekly Digests or call 512/463-1403.

Steve Peterson
State Bar General Counsel

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*I do the very best I know how — the very best I can;
and I mean to keep doing so until the end. If the end
brings me out all right, what is said against me won't
amount to anything. If the end brings me out wrong, 10
angels swearing I was right would make no difference.*

— Abraham Lincoln

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369	TBJ — November, 1974	404	TBJ — September, 1982
370	TBJ — August, 1974	405	TBJ — June, 1983
371	TBJ — May, 1975	406-407	TBJ — November, 1983
372-374	TBJ — November, 1974	408-412	TBJ — January, 1984
375-376	TBJ — December, 1974	413-414	TBJ — April, 1984
377	TBJ — January, 1975	415	TBJ — September, 1984
378-379	TBJ — February, 1975	416-417	TBJ — June, 1984
380-381	TBJ — May, 1975	418	TBJ — October, 1984
382	TBJ — June, 1975	419-420	TBJ — December, 1984
383	TBJ — December, 1975	421-423	TBJ — February, 1985
384	TBJ — April, 1976	424-425	TBJ — May, 1985
385	TBJ — May, 1976	426-428	TBJ — September, 1985
386	TBJ — July, 1976	429	TBJ — December, 1985
387	TBJ — June, 1977	430	TBJ — June, 1986
388	TBJ — July, 1977	431	TBJ — November, 1986
389	TBJ — October, 1977	432-435	TBJ — October, 1986
390-391	TBJ — April, 1978	436-437	TBJ — November, 1986
392	TBJ — July, 1978		



HAZARDOUS BUSINESS CONDITIONS

Because attorneys are sometimes perceived as legal representatives in situations where they are merely participants, they must be cautious about becoming involved with clients in business ventures.

We are aware of numerous malpractice claims involving business ventures in which the lawyer is alleged to have had his professional judgment affected by his business interest. Most of these disputes are messy and involve multiple conflict of interest allegations by claimants whom the lawyer had no intention of representing. Not surprisingly, most of these allegations are the result of business deals that do not produce the desired profits for the participants.

Business dealings with clients may result in disciplinary actions as well. It was reported, in a recent issue of the *Texas Bar Journal*, that the District 4-C Grievance Committee disciplined an attorney because, he, among other things, "... participated in a business transaction with a former client under circumstances where the exercise of professional judgment could have been affected by his own business interest."

If you elect to do business with your clients anyway, we recommend the following:

- Do not act as the lawyer for the venture or any party with an interest in it.
 - If you get involved in business deals, inform your clients or former clients that you are not their attorney or the attorney for the business venture.
 - Explain potential conflicts to all parties and advise them to seek independent counsel about the business deal.
 - Determine if others involved in the business deal might conceivably believe that you are their lawyer. If such people exist, inform them in writing that you do not represent their interest.
 - Budget sufficient funds to defend yourself and pay any judgment if the business venture is unsuccessful. All current professional liability insurance policies of which we are aware exclude coverage for "business enterprises."
- Never do the following:
- Buy property from a client unless an independent appraisal is obtained with the appraiser chosen by the client.
 - Borrow money from a client.



Texas Lawyers' Insurance Exchange
P.O. Box 13325, Capitol Station
Austin, Texas 78711
Local Phone: 480-9074
Toll Free: 1-800-252-9332

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